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February 7, 2003

FILE NO: 58933.12

BY HAND

Hon. Joel H. Peck, Clerk
State Corporation Commission
Clerk's Office
Document Control Center
Tyler Building - First Floor
Richmond, VA 23219

**At the Relation of the
State Corporation Commission
Ex Parte: In the Matter Concerning the
Provision of Default Service to Retail
Customers Under the Provisions of the
Virginia Electric Utility Restructuring Act
Case No. PUE-2002-00645**

Dear Mr. Peck:

Mirant Americas Inc. hereby files an original and 15 copies of its Comments in the State Corporation Commission's review of default service to retail customers under the provisions of the Virginia Electric Utility Restructuring Act. These Comments are filed pursuant to the Commission's Ordering Paragraph 4 in its Order Establishing Investigation, dated December 23, 2002. Mirant Americas, Inc.'s participant in the workgroup will be

Bruce Campbell
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Hon. Joel H. Peck, Clerk
February 7, 2002
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Mr. Campbell and I would both appreciate receiving official notices from the Staff and other parties as appropriate in this proceeding.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard D. Gary", with a long, sweeping horizontal stroke extending to the right.

Richard D. Gary

01406/05508

Enclosures

cc: Mr. Bruce Campbell

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

At the Relation of the)	
)	
STATE CORPORATION COMMISSION)	CASE NO. PUE-2002-00645
)	
Ex Parte: In the matter concerning the)	
provision of default service to retail)	
customers under the provisions of the)	
Virginia Electric Utility Restructuring Act)	

COMMENTS OF MIRANT AMERICAS INC.

Mirant Americas Inc. ("Mirant"), a Delaware corporation, owns interests in the Birchwood Power Plant in King George County, Virginia and in the Potomac River Plant in Alexandria, Virginia. Mirant is interested in the provision of default electric service in Virginia and offers these comments in anticipation of participating in the provision of electricity to default suppliers. Mirant anticipates providing default service in Virginia and elsewhere to incumbent electric distribution companies ("EDCs") for service by them to end use customers. Mirant has participated in extensive discussions in Maryland with EDCs, independent generators and retail customers regarding default service that has resulted in a Settlement Agreement among those parties which is pending before the Maryland Public Service Commission. A copy of the Settlement Agreement is attached for the Staff's convenience and review.

Mirant will be represented in the workshop by:

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Issues and Comments

1. *What should be the specific components of default service?*

Response: Default service should include the provision of energy, any capacity requirements imposed to support long-term reliability and transmission service. Transmission service incorporates energy related ancillary services, such as frequency and regulation control, balancing service and operating reserves as well as reactive support and scheduling.

2. *Whether, given the virtual absence of competition in Virginia's retail generation market, incumbent electric utilities should continue to provide default service at capped rates at the present time; if so, what changes in statute, policy, infrastructure, market conditions, and/or other circumstances are necessary to allow for the practical provision of default service by an entity other than the incumbent?*

Response: Provision of default service can be most conveniently provided by incumbent EDCs and should be provided with competitively procured energy at market based rates. Mirant assumes this default service will begin in Virginia once capped rates end in 2007. Mirant envisions an annual procurement period that incorporates an auction or other open procurement process by which the EDC procures energy supply. The SCC

would either monitor or actually conduct the bidding process. A necessary prerequisite to this process is a functioning wholesale electricity market, preferably similar to the FERC Standard Market Design (“SMD”). Such an approach would allow SCC oversight of default service while also facilitating competitive retail supply of energy to customers desiring default service. While it can be expected that incumbent utilities may initially win the large bulk of supply rights, some minimum share of the default supply should be reserved for non-incumbents. This reliance on competitively procured default service can be phased in to allow a gradual lowering of the barriers to entry for new competitors and to allow incumbent utilities to develop other markets for their electric service.

3. What should be the geographic scope of a default service provider's territory, i.e. statewide, incumbent utility service territory, regions served by specific regional transmission entities; divisions within an incumbent utility's service territory; major metropolitan and surrounding areas, etc.?

Response: A default provider's territory should be contiguous with the incumbent EDC's service territory. The primary reason for this is the need to manage retail load shifts. The incumbents have the necessary metering and billing infrastructure and will retain responsibility for distribution systems and related services. Thus, even where retail providers take over billing and meter reading functions, the incumbents retain a relationship with every customer. The alternative is to create a regional or statewide data capability for every customer. Mirant views this alternative as unnecessary at this time. Segmenting incumbent service territories is likely to result in variations in default supply costs within these territories – possibly an unacceptable result. Using incumbent territories will facilitate preservation of existing

averaging/socialization of congestion costs assuming a PJM/SMD-style locational marginal pricing ("LMP") market.

4. Whether default service, as contemplated by § 56-585 of the Act, should be limited to unregulated services, i.e. is it necessary to designate distribution service as a default service?

Response: The incumbent should retain the right and obligation to supply distribution service. While some retail providers may wish to bill customers for retail service and pass through the distribution costs back to the utility, this is an issue for retail access, not default supply.

5. For generation-related default service, whether the separate components of generation service to retail customers (capacity or resource reservation, energy, transmission, and ancillary services) should be treated as separate default services or bundled into a single service?

Response: Default service should be bundled to include provision of energy, any capacity requirements imposed to support long-term reliability and transmission service. Transmission service incorporates energy related ancillary services such as frequency and regulation control, balancing service and operating reserves as well as reactive support and scheduling. Virginia should chose whether default wholesale supply to the incumbent EDC should include transmission service or whether the incumbent should procure transmission directly and then bundle with energy. Mirant recommends that energy related ancillary services not be unbundled for wholesale supply because it would add considerable complexity to procurement processes.

6. For generation-related default service, whether the service should be delivered to the retail customer or to the incumbent utility?

Response: Mirant recommends that default service be delivered to the incumbent EDC. This is primarily because the exposure to volume risk (the chance that large amounts of retail load could default to the default provider) is high. Having the service delivered to the incumbent EDC facilitates methods to address this risk in fair and progressive ways. Mirant expects that the Commission, similar to the Maryland Settlement, will seek to limit the difference in rates for retail customers that simply prefer to stay with the incumbent and those that return to the incumbent either voluntarily or through supplier default. Rate differentiation can be minimized, if not eliminated, if this risk of large retail shifts is shared. The Commission will need to develop a structure to assure that there is a fair process to deal with the risk of over or undersupply of capacity as default loads fluctuate.

7. Whether the language of the statute prohibits the provision of default service to an incumbent utility on behalf of a group of customers, i.e. could a third party provide service to an incumbent utility for indirect service to retail customers (service to satisfy load growth, specific localities, or to customer subgroups)?

Response: After capped rates end in 2007, all load served by the incumbent EDC will be default service. Incumbents should be prohibited from offering competitive service, except through unregulated affiliates with appropriate codes of conduct limiting self dealing. There is no reason why a third party could not supply directly or indirectly service to a group of retail customers.

8. Whether the provision of default services should differ by customer class?

Response: The method of default supply should be the same for all customer classes. The default supply for each class, however, should be procured separately. This is because each class has a different load profile and the rate of movement to competitive

suppliers may vary by class. If the customer classes are combined, the actual load profile that is served by the default provider could change as load shifts between the incumbent EDC and other competitive suppliers. Furthermore, retail providers will find certain classes less expensive to serve, encouraging movement from some classes and not others.

9. Whether different components of default service can be provided by different suppliers?

Response: Mirant recommends that one supplier provide all components of the default supply. Further unbundling would result in added complexity to the procurement process.

10. Whether default service has the same meaning for different classes of customers, i.e., those who do not affirmatively select a supplier, those who are unable to obtain service from an alternative supplier, or those who have contracted with an alternative supplier who fails to perform?

Response: Mirant supports inclusion of all the different “classes” in default service. It may be appropriate, however, to incorporate different trigger mechanisms, transition premiums or other provisions for different classes of customers that return to or stay with default service. For example

- A. A customer that voluntarily returns to default service might be required to stay for a minimum of 1 year or to pay a transition premium for a limited period. The transition terms for industrial customers might be more costly because industrial customers impose more risk to the default supplier because of their size and “lumpiness”. The Commission may need to revisit the retail access rules to be sure these provisions are consistent.

B. Customers whose supplier defaults and increases the default load by more than 5% might trigger a higher default rate for all default customers and this needs to be discussed.

C. In some service territories in Maryland, the default rate for industrial customers is the hourly LMP. This provision encourages competitive retail supply for these customers.

11. How should charges for default service be collected?

Response: The incumbent EDC--assuming the incumbent is the purchasing wholesale default supplier--should bill default service charges.

12. Whether metering, billing and collecting services should be deemed components of default service?

Response: Metering, billing and collecting services are not components of wholesale default supply.

13. What implications would the alternative provision of default service have for the determination of wires charges?

Response: Wire charges will be eliminated when capped rates end in 2007. If default service begins prior to the end of capped rates, wire charges should be collected from all customers by the incumbent EDCs.

Respectfully submitted,

MIRANT AMERICAS INC.

By 

Counsel

Dated: February 7, 2003

Richard D. Gary
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

IN THE COMPETITIVE SELECTION
OF ELECTRICITY
SUPPLIER/STANDARD OFFER
SERVICE.

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 8908

SETTLEMENT AGREEMENT

The Potomac Edison Company d/b/a Allegheny Power (“AP”), Baltimore Gas and Electric Company (“BGE”), Delmarva Power & Light Company (“Delmarva”), Potomac Electric Power Company (“Pepco”), the Staff of the Maryland Public Service Commission (“Staff”), Maryland Office of People’s Counsel (“OPC”), Mirant Mid-Atlantic, LLC, Conectiv Energy Supply, Inc., Mid-Atlantic Power Supply Association, Constellation NewEnergy, Inc., Pepco Energy Services, Inc., Maryland Industrial Group (“MIG”), Maryland Energy Users Group, Maryland Retailers Association (“MRA”), Building Owners and Managers Association of Baltimore, Inc. (“BOMA”), Maryland Energy Administration (“MEA”), Power Plant Research Program of the Department of Natural Resources, Strategic Energy, LLC, Southern Maryland Electric Cooperative, Inc., and Choptank Electric Cooperative, Inc., (individually and collectively referred to as the “Settling Parties”), agree as follows:

WHEREAS, the fixed price power supply service currently provided to residential and non-residential customers of AP, BGE, Delmarva, and Pepco will expire at various

times starting in 2004 pursuant to the terms of the settlements in Cases Nos. 8794/8804, 8795, 8796, 8797, 8890, and 8936; and

WHEREAS, the Commission instituted this proceeding to establish procedures for the competitive selection of electric supply for standard offer service; and

WHEREAS the Settling Parties have agreed upon the terms and procedures, set forth in this Settlement, for the provision of standard offer and default service to customers, through the competitive selection of wholesale supply, for the periods set forth in the Settlement; and

NOW, THEREFORE, the Settling Parties agree to the following stipulation and Settlement Agreement ("Settlement"):

I. Residential Standard Offer Service

1. The obligation arising from this Settlement of the investor-owned electric companies to provide Standard Offer Service ("SOS") to all residential customers shall be extended for the periods set forth below. Accordingly, AP, BGE, Delmarva, and Pepco (collectively the "Utilities") agree to provide SOS to residential customers within their respective Maryland franchise territories for the following periods (collectively the "Residential Service Periods"):
 - a) AP will provide SOS to residential customers from January 1, 2009, to December 31, 2012, subject to Paragraph 4(d).
 - b) BGE will provide SOS to residential customers from July 1, 2006, to May 31, 2010.

- c) Delmarva will provide SOS to residential customers from July 1, 2004, to May 31, 2008.
 - d) Pepco will provide SOS to residential customers from July 1, 2004, to May 31, 2008.
- 2. Rules, terms and conditions in this Settlement for this regulated service will remain the same for the entirety of the Residential Service Periods.
- 3. Following each year of its Residential Service Period, each Utility will report to the Commission on its wholesale electric supply procurement process and results, SOS retail prices produced, and enrollment activity for this service (including the number of customers, megawatt peak load, kilowatt hour energy, and switching to and from the service) for the prior year. Copies of this report will be served on all Parties on the Case No. 8908 service list ("Parties"). This requirement is not intended to replace or restrict other reporting requirements that the Commission has or may impose upon utilities or electric suppliers.
- 4. The Commission will docket a proceeding for a major policy review of Residential SOS during the second half of the second program year of each Utility's Residential Service Period when procurement and price results for the second year are known and there is some second year enrollment experience.
 - a) The Commission Staff will initiate the policy review and will provide relevant information, analysis, conclusions and recommendations.
 - b) The final Commission order resulting from each Utility's policy review will apply only to the provision of SOS in that Utility's service territory following

its Residential Service Period. All issues associated with the provision of SOS after the Residential Service Periods are open to review and change.

- c) Results of the policy review may differ for each Utility's Maryland franchise territory.
 - d) AP agrees to provide SOS to residential customers consistent with the terms set forth in this Settlement and with any changes to this Settlement that may have been agreed to by the Settling Parties and ordered by the Commission.
5. All residential customers are eligible for Residential SOS, subject to the general terms and conditions of the Utilities' tariffs and the Commission's regulations, as they may change from time to time subject to Commission approval.
6. Electric supply for Residential SOS will be obtained by each Utility pursuant to a competitive wholesale procurement process. The specific bidding format, form of bid request, timeline for the bidding and timely bid evaluation process, as well as a model bid evaluation plan and a model power supply contract (collectively referred to as the "Model Bid Plan") will be developed in Phase II of this proceeding. There is a presumption that the wholesale bidding process developed in Phase II of this proceeding will use Requests for Proposals ("RFPs") to solicit supply offers. The *Model Bid Plan that results from Phase II will be submitted to the Commission for approval. Proposed regulations will be submitted to the Commission for approval after Phase II.*
7. The Model Bid Plan to be developed in Phase II will include, but not be limited to, the following features:

- a) The Utilities will solicit offers for Full-Requirements Service. Full-Requirements Service includes, but is not limited to, the provision of electric energy, energy losses, generation capacity, ancillary services and any other PJM or FERC-approved services and associated costs related to the Utilities' SOS load obligation, with the exclusion of network integration transmission service. This description of Full-Requirements Service is not intended to be the complete definition of Full-Requirements Service, nor is it intended to cover all of the wholesale suppliers' responsibilities. The final definition of Full-Requirements Service and the complete scope of the wholesale suppliers' responsibilities will be developed in Phase II.
- b) Each Utility will solicit offers for 1, 2 and 3 year terms. Each Utility will compile a portfolio of 1, 2 and 3 year term conforming offers such that 1-year offers comprise at least 50% of each year's requirements, 2-year offers comprise at most 25% of each year's requirements, and 3-year offers comprise at most 25% of each year's requirements. The Utilities will select 1, 2, and 3-year conforming offers to meet these percentage targets in accordance with the Model Bid Plan.
- c) Each Utility will solicit seasonally differentiated and, if applicable, time-of-use differentiated prices. In the case of multi-year-term contracts, prices will, in addition, be annually specified.
- d) Supply contracts with each Utility shall not extend beyond that Utility's Residential Service Period, unless as a result of the major policy review the

Commission provides for further Utility-procured SOS beyond the Residential Service Period.

- e) The total load may be divided into load blocks to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total SOS load and each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.
- f) The first SOS year will end May 31 of the first year in each Utility's Residential Service Period, and the second year will begin June 1 of the same calendar year, in order to reset SOS periods to conform to the PJM planning period. Notwithstanding any other provision of this Settlement, this reset provision may be revisited if PJM changes its planning periods.
- g) The Model Bid Plan will take into account the bidder's price, the bidder's credit worthiness and financial capability, the bidder's experience, supply diversity, and any other similar factors.
- h) The Model Bid Plan will also describe procedures that will be used in the event that conforming bids to provide electricity supply do not fill all requested load blocks or if the conforming offers for a particular term result in significant pricing anomalies as reflected in the blended price of the compiled portfolio. These procedures will only apply to the unfilled blocks or for those blocks that create the pricing anomalies. These procedures also will be designed to ensure

reliable supply to customers and to ensure that the Utilities do not bear the risk of such failure to secure bids or the risk associated with pricing anomalies.

8. Each Utility will submit its specific forms of bid request, evaluation plan, and standard form contracts (collectively the "Utility Bid Plan") to the Commission for review of compliance with the Commission-approved Model Bid Plan for Residential SOS. Copies of the Utility Bid Plan will be served on the Parties.
9. Each Utility will submit the final bid results, bid award(s) and proposed contracts(s) to the Commission for its review and determination of compliance with the Utility Bid Plan. The Parties will consider in Phase II whether the submission would also be provided to the Parties with appropriate confidentiality protection. The contract(s) will be deemed to be in compliance with the Utility Bid Plan and approved by the Commission unless the Commission orders otherwise within 2 business days following the submission. The Parties will determine in Phase II the period of time between the Commission's review and when details of the awarded bid(s) become public.
10. Winning bidders will receive the actual prices in their offers for each year of the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of their supply contracts.
11. The retail prices to Residential SOS customers for each Utility will consist of the sum of the following components:

- a) The seasonally-differentiated and, if applicable, time-of-use differentiated load weighted average of all awarded electric supply prices for specific services in each year;
 - b) Retail charges designed to recover, on an aggregate basis, FERC-approved transmission charges and any other PJM charges and costs incurred by the Utility directly related to the Utility's Residential SOS load obligation;
 - c) An Administrative Charge; and
 - d) Applicable taxes.
12. The Administrative Charge will be a 4 mill (0.4 cents) per kWh charge. The Administrative Charge applies exclusively to kWh of SOS load, and shall not be applicable to kWh load served by competitive retail suppliers.
- a) 1.5 mills (0.15 cents) per kWh of the Administrative Charge will be paid to the Utilities as return, for retention by their shareholders. This return component shall remain fixed for the entirety of each Utility's Residential Service Period except as provided in Paragraph 12(d). The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.
 - b) 0.5 mills (0.05 cents) per kWh of the Administrative Charge will be paid to the Utilities for their incremental costs of supplying Residential SOS (not including Residential SOS uncollectibles). Such incremental costs shall not include Residential SOS cash working capital revenue requirement, which is

deemed to be reflected in full for residential customers through the return component of the Administrative Charge as specified in Paragraph 12(a). This incremental cost component shall remain fixed, without reconciliation, for the entirety of each Utility's Residential Service Period. The Utilities' actual incremental costs of Residential SOS will not be included in the Utilities' distribution cost calculations in the Utilities' subsequent distribution rate cases. No Settling Party will support or propose a change to remove Residential SOS-related costs, in any distribution rate proceeding that will take effect during the Residential Service Period, that would reduce distribution rates by more than the revenue collected by the Utility from residential customers for this 0.5 mill component of the Administrative Charge.

- c) The remaining 2 mills (0.2 cents) per kWh of the Administrative Charge will be collected by the Utilities and applied as follows. For BGE, this 2 mill portion of the Administrative Charge will be reduced by 1.1 mill, which is to reflect its uncollectible costs currently reflected in its SOS component of rates. The remainder of the 2 mill portion after subtracting the uncollectible costs rate is henceforth referred to as the Administrative Adjustment. In the event a subsequent base rate case or base rate review occurs in which a different level of uncollectible costs are assigned to the SOS component of rates, such different level of costs shall be converted to a millage rate and used to change commensurately the Administrative Adjustment applicable to BGE. For the other Utilities, the full 2 mill portion will comprise the Administrative

Adjustment, until their next base rate case or base rate review. In their next base rate case or base rate review, an allocation of those Utilities' uncollectibles to the supply component of rates will be made based on general rate-making principles. However, the foregoing shall not be interpreted as requiring a single-issue distribution rate reduction, and any change in distribution rates shall be based on normal ratemaking reviews of overall costs and revenues allocated to the distribution portion of rates. The resulting level of uncollectible costs shall be converted to a millage rate and be subtracted from this 2 mill portion of the Administrative Charge to derive the Administrative Adjustment.

- d) If, after the execution of this Settlement, any Utility is required by a change in law, order, or regulation, not initiated by the Utility, to incur actual incremental costs, not reflected in the Utility's current distribution rates, that would cause the Utility's total actual incremental costs to exceed 0.5 mills per kWh, then the Utility may file with the Commission to collect those costs that exceed the 0.5 mills per kWh. If, after the execution of this Settlement, any Utility is required by a change in law, order, or regulation, not initiated by the Utility, to incur actual incremental costs, not reflected in the Utility's current distribution rates, that would cause the Utility's total actual incremental costs to be reduced to less than 0.5 mills per kWh, then OPC may file with the Commission to reduce the 0.5 mills per kWh component of the Administrative Charge commensurately. The provisions of this subparagraph do not apply to either

Residential SOS cash working capital revenue requirement which is deemed to be reflected in the return component as provided in Paragraph 12(a) or to Residential SOS-related uncollectibles which are reflected separately as provided in Paragraph 12(c). Upon Commission approval of the filing, any increase in incremental costs would be subtracted from the Administrative Adjustment, and any reduction in incremental costs would be added to the Administrative Adjustment. If the additional incremental costs are greater than the balance of the revenue associated with the Administrative Adjustment after all other deductions, the remaining costs would be collected on a per-kWh basis from all Residential SOS customers. If a Utility's incremental cost recovery is changed pursuant to this Paragraph, any Party may move that the Commission examine whether that Utility's return set in Paragraph 12(a) should also be adjusted (which examination may include consideration of the level of Residential SOS cash working capital revenue requirement), provided however that such adjustment can never cause the return to drop below 1.25 mills per kWh or to increase above 1.75 mills per kWh.

- e) In no event shall the Administrative Charge be less than the sum of the return (subject to Paragraph 12(d)), the incremental costs (subject to Paragraph 12(d)), and the uncollectibles (subject to Paragraph 12(c)).

13. The revenues associated with the Administrative Adjustment will be credited to all residential distribution customers in the form of a per kWh credit, which will be calculated by dividing the available revenues by the total distribution kilowatt-

hours. This credit to all Residential distribution customers will be revised quarterly to reflect changes in the revenues collected for the credit and in the level of distribution service sales used to calculate the credit. Annually, any difference between the amount actually collected to fund the credit and the amount credited to customers will be incorporated in the next year's calculation of the credit.

14. Except as otherwise provided in this Settlement:

- a) The Administrative Charge will remain fixed at 4 mills/kWh during each Utility's Residential Service Period until such time as 35% of residential capacity peak load contribution have migrated to competitive retail supply, as reported in a monthly enrollment report to be specified in Phase II. At that time, the Administrative Adjustment will be reduced by 50% and the Administrative Charge will be reduced commensurately. The Administrative Charge will remain fixed at this reduced level until such time as 50% of residential capacity peak load contribution have migrated to competitive retail supply, as reported in a monthly enrollment report to be specified in Phase II. At that time, the Administrative Adjustment will be eliminated, and the Administrative Charge will be reduced commensurately.
- b) In no event shall the Administrative Charge be less than the sum of the return (subject to Paragraph 12(d)), the incremental costs (subject to Paragraph 12(d)), and the uncollectibles (subject to Paragraph 12(c)).

- c) The mechanisms set forth herein to reduce or eliminate the Administrative Adjustment will be implemented, once triggered, effective with the beginning of the next Residential SOS program year.
15. All customers eligible for Residential SOS will be informed of the retail prices and the price to compare for the service for the next service year at least two (2) months prior to the beginning of that service year. If it is not practicable to provide such notice, the Utilities shall file with the Commission and serve upon the Parties notice of that fact, the reasons for the delay, and the expected date for the provision of such information.
 16. In the event that more than 25% of the total residential load within a Utility territory migrates to competitive retail supply, Staff will initiate a process to determine whether the Utility's Bid Plan should be altered prospectively solely to include a feasible mechanism to address volumetric risk to wholesale SOS suppliers. This mechanism will be designed to ensure reliable supply to customers and to ensure that the Utility does not bear the risk of any such mechanism.
 17. Subject to the Utilities' customer enrollment rules and tariffs, customers may leave and return to Residential SOS at any time without switching restrictions. In the event that a Party can demonstrate there is significant gaming occurring, (e.g., substantial quantities of load swinging back and forth between SOS and competitive retail suppliers as market prices rise above and fall below the SOS price), that Party may propose to the Commission measures to mitigate such activities. Any such

measures shall apply only to the residential class in the affected Utility service territory.

18. Phase II of this proceeding will, among other things, develop procedures to be followed in the event of a default by a wholesale supplier of power for Residential SOS load, which procedures will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such default.

II. Type I Non-Residential Standard Offer Service

19. Customers taking distribution service under the following current rate schedules (or their successors) are eligible for Type I Non-Residential Standard Offer Service ("Type I SOS"):
 - a) For AP, all customers on Schedules C, C-A, CSH, G, OL, AL, MSL, SL, EMU, MU, and EM of AP's tariffs.
 - b) For BGE, all customers on Schedules G, GS, PL, TN, and SL of BGE's tariffs.
 - c) For Delmarva, all customers on Schedules SGS-S (with less than 60 kw demand), OL, ORL, and separately-metered SH/WH of Delmarva's tariffs.
 - d) For Pepco, all customers on Schedules GS Non-Demand, T, SL, TN, EV and OL of Pepco's tariffs.
20. The Utilities agree to provide Type I SOS within their respective Maryland franchise territories for the following periods (collectively the "Type I Service Periods"):
 - a) AP will provide Type I SOS from January 1, 2005, to December 31, 2008.
 - b) BGE will provide Type I SOS from July 1, 2004, to May 31, 2008.

- c) Delmarva will provide Type I SOS from the end of the bridge period in 2004 that was set in Case No. 8936, to May 31, 2008.
 - d) Pepco will provide Type I SOS from July 1, 2004, to May 31, 2008.
21. Rules, terms and conditions in this Settlement for this regulated service will remain the same for the entirety of the Type I Service Periods.
22. Following each year of its Type I Service Period, each Utility will report to the Commission on its wholesale electric supply procurement process and results, SOS retail prices produced, and enrollment activity for this service (including the number of customers, megawatt peak load, kilowatt hour energy, and switching to and from the service) for the prior year. Copies of this report will be served on all Parties. This requirement is not intended to replace or restrict other reporting requirements that the Commission has or may impose upon utilities or electric suppliers.
23. The Commission will docket a proceeding for a major policy review of Type I SOS during the second half of the second program year of each Utility's Type I Service Period when procurement and price results for the second year are known and there is some second year enrollment experience.
- a) The Commission Staff will initiate the policy review and will provide relevant information, analysis, conclusions and recommendations.
 - b) The final Commission order resulting from each Utility's policy review will apply only to the provision of SOS in that Utility's service territory following its Type I Service Period. All issues associated with the provision of SOS after Type I Service Periods are open to review and change.

- c) Results of the policy review may differ for each Utility's Maryland franchise territory.
- 24. All customers eligible for Type I SOS are subject to the general terms and conditions of the Utilities' tariffs and the Commission's regulations, as they may change from time to time subject to Commission approval.
 - 25. Electric supply for Type I SOS will be obtained by each Utility pursuant to a competitive wholesale procurement process. The Model Bid Plan for Type I SOS will be developed in Phase II of this proceeding. There is a presumption that the wholesale bidding process developed in Phase II of this proceeding will use RFPs to solicit supply offers. The Model Bid Plan that results from Phase II will be submitted to the Commission for approval. Proposed regulations will be submitted to the Commission for approval after Phase II.
 - 26. The Model Bid Plan to be developed in Phase II will include, but not be limited to, the following features:
 - a) Each Utility will solicit offers for Full-Requirements Service (as described in 7(a)) for some combination of 1 and 2-year terms. At least 50% of the load will be served under contracts of 1-year term and at least 30% of the load will be served under contracts of 2-year terms.
 - b) Each Utility will solicit seasonally differentiated and, if applicable, time-of-use differentiated prices. In the case of 2-year-contract terms, prices will, in addition, be annually specified.

- c) Supply contracts with each Utility shall not extend beyond that Utility's Type I Service Period, unless as a result of the major policy review the Commission provides for further Utility-procured SOS beyond the Type I Service Period.
- d) The total load may be divided into load blocks to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total SOS load and each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.
- e) The first SOS year will end May 31 of the first year in each Utility's Type I Service Period, and the second year will begin June 1 of the same calendar year, in order to reset SOS periods to conform to the PJM planning period. Notwithstanding any other provision of this Settlement, this reset provision may be revisited if PJM changes its planning periods.
- f) The Model Bid Plan will take into account the bidder's price, the bidder's credit worthiness and financial capability, the bidder's experience, supply diversity, and any other similar factors.
- g) The Model Bid Plan will also describe procedures that will be used to resolicit, rebid or otherwise secure electric supply in the event that conforming bids to provide electricity supply do not fill all requested load blocks. These procedures will only apply to the unfilled blocks. These procedures also will be designed to ensure reliable supply to customers and to ensure that the

Utilities do not bear the risk of such failure to secure bids. It is presumed that the Paragraph 26(a) portfolio allocation thresholds will be resumed, if modified, as soon as practical.

27. Each Utility will submit its specific Utility Bid Plan to the Commission for review of compliance with the Commission-approved Model Bid Plan for Type I SOS. Copies of the Utility Bid Plan will be served on the Parties.
28. Each Utility will submit the final bid results, bid award(s) and proposed contract(s) to the Commission for its review and determination of compliance with the Utility Bid Plan. The Parties will consider in Phase II whether the submission would also be provided to the Parties with appropriate confidentiality protection. The contract(s) will be deemed to be in compliance with the Utility Bid Plan and approved by the Commission unless the Commission orders otherwise within 2 business days following the submission. The Parties will determine in Phase II the period of time between the Commission's review and when details of the awarded bid(s) become public.
29. Winning bidders will receive the actual prices in their offers for each year of the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of their supply contracts.
30. The retail prices to Type I SOS customers for each Utility will consist of the sum of the following components:

- a) The seasonally-differentiated and, if applicable, time-of-use differentiated load weighted average of all awarded electric supply prices for each service in each year;
 - b) Retail charges designed to recover, on an aggregate basis, FERC-approved transmission charges and any other PJM charges and costs incurred by the Utility directly related to the Utility's Type I SOS load obligation;
 - c) An Administrative Charge; and
 - d) Applicable taxes.
31. The Administrative Charge will be a 5.5 mill (0.55 cents) per kWh charge, fixed for each Utility's Type I Service Period. The Administrative Charge applies exclusively to kWh of SOS load, and shall not be applicable to kWh load served by competitive retail suppliers.
- a) 2.0 mills (0.2 cents) per kWh of the Administrative Charge will be paid to the Utilities as return, for retention by their shareholders. This return component shall remain fixed for the entirety of each Utility's Type I Service Period. *The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.*
 - b) The remaining 3.5 mills (0.35 cents) per kWh of the Administrative Charge will be collected by the Utilities and allocated in the following order:

- (1) The revenue from the 3.5 mills (0.35 cents) per kWh will first be reduced to reflect the Utilities' actual incremental costs of providing Type I SOS as defined in this Settlement for each year of program operation.
- (A) Prior to the first year of program operation, and for each year thereafter, the Utilities shall file with the Commission, and provide to Parties, annual estimates of actual incremental costs for the upcoming year on a total cost and mills per kWh basis, with all supporting documentation. The Staff shall audit (except for the first year) and verify these estimates and report the results to the Parties.
- (B) Following each year of program operation, each Utility shall file with the Commission, and provide the Parties, a report detailing the actual incremental costs of providing Type I SOS as defined in this Settlement for the previous year, with all supporting documentation. The Staff shall audit and verify these actual incremental costs and report the results to the Parties.
- (C) In Phase II, the Parties will consider whether to implement more frequent true-ups.
- (D) The actual incremental costs for a given Type I SOS year shall be used to true up the estimated incremental costs for that same year, and any over- or under-collection of costs shall be applied to the estimated incremental costs for the next Type I SOS program year.
- (E) For purposes of this Settlement, "actual incremental costs" are

defined as additional reasonable costs prudently incurred by a Utility only as a direct result of providing Type I SOS that are not included in distribution service rates. For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a Utility's distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education; transactions costs; and cash working capital revenue requirement, subject to the limitations in subsection (2) below. Such incremental costs shall not include any compensation for the risk of providing Type I SOS.

- (2) The Utility shall calculate the cash working capital revenue requirement associated with Type I SOS. One half of that revenue requirement is recovered as part of the return component of the Administrative Charge. The remaining half is recovered as part of the incremental cost component of the Administrative Charge, subject to a ceiling amount of 0.15 mills per kWh. Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II. The calculation of cash working capital revenue requirement shall use the Utility's total weighted cost of capital grossed up for income taxes.
- (3) The revenue resulting from the portion of the 3.5 mills (0.35 cents) per kWh remaining following the deduction for Type I SOS incremental costs shall be credited, dollar for dollar, to all distribution customers eligible for

Type I SOS. For the first year of program operation, and each year thereafter, the residual balance shall be determined by deducting the estimated incremental costs as determined under this Settlement from the revenue estimate determined by multiplying 3.5 mills (0.35 cents) per kWh by the estimated kWh of Type I SOS for that year. This residual balance will be shared among all non-residential distribution customers eligible for Type I SOS on a per kWh distribution sales service basis, beginning on the first day of the first year of the Type I Service Period.

- (4) In the event that Type I SOS actual incremental costs for a given year are greater than the revenue derived from the 3.5 mills (0.35 cents) per kWh, the per-kWh credit shall be zero and the Settling Parties agree to immediately enter good faith negotiations to resolve issues pertaining to the recovery of such amounts. If the Settling Parties are unable to agree following such negotiations, the matter shall be submitted to the Commission for prompt determination. Parties are free to take any position concerning such costs, including, but not limited to, whether such costs are correct and the manner of recovery, but are not permitted to argue that actual incremental costs as defined in this Settlement are not recoverable.
- (5) At the conclusion of the entirety of each Utility's Type I Service Period, and after actual incremental costs incurred by the Utilities have been determined, the Parties will agree upon a mechanism with respect to

actual incremental costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for Type I SOS at the conclusion of each Utility's Type I Service Period. If the Parties fail to agree within a reasonable period, the matter will be submitted to the Commission for decision. The Settling Parties retain all rights to take any position concerning these issues, except that no party may argue that actual incremental costs are not recoverable.

32. All customers eligible for Type I SOS will be informed of the retail prices and the prices to compare for the service at least two (2) months prior to the beginning of each service year. If it is not practicable to provide such notice, each Utility shall file with the Commission and serve upon the Parties notice of that fact, the reasons for the delay, and the expected date for the provision of such information.
33. The Settling Parties agree that all solicitations for the wholesale supply of Type I SOS will be required to include provisions to mitigate wholesale suppliers' exposure to the volumetric risk associated with customer migration. In Phase II, the Settling Parties agree to develop a procurement structure to adequately address the customer migration risk to the wholesale suppliers. This structure will be designed to ensure reliable supply and to ensure that the Utilities do not bear the risk of this contract and supply structure. A mechanism will be developed in Phase II that will address the levels of volumetric and pricing risks to which the wholesale suppliers will be exposed, and how such risks will be addressed. The Parties will consider specific methods for risk containment, including but not limited to:

- a) Percentage load variations (bandwidths) for both increases and decreases (currently discussed as 5%);
- b) The release of the wholesale suppliers' obligation to supply load, at the original contract fixed price, that has been lost due to customers migrating to the retail supply market (based on decreases in actual megawatt load being served);
- c) The pricing structure for load migrating to SOS (that will result in a weighted average, single-rate-class pricing structure); and
- d) Other components that will balance the needs of suppliers and the value to customers.

The mechanism adopted in Phase II will require the SOS wholesale suppliers to fully meet the Utilities' SOS load at all times; however, the SOS wholesale suppliers will not be required to take incremental load obligations that are not specifically identified and priced as incremental load.

- 34. In the event that a Phase II settlement is not achieved that will implement Paragraph 33, and there is litigation regarding such appropriate customer migration risk mitigation measures, and the Commission determines not to implement a customer migration risk mitigation provision that is reasonably consistent with the provisions of Paragraph 33, then the requirements of Paragraph 35 shall be voided. The Parties may thereafter propose alternative customer migration risk mitigation measures. In such circumstance, all Settling Parties reserve the right to take any position with

respect to any proposed alternative customer migration risk mitigation measure, including the position that no such measures are appropriate.

35. Except as provided in this Settlement and the Utilities' customer enrollment rules and tariffs, and effective during the service periods specified herein, there shall be no minimum stay, exit fees or penalties, or similar provisions or restrictions that may inhibit any Type I SOS customer's ability to switch to or from any electricity supplier or service.
36. Phase II of this proceeding will, among other things, develop procedures to be followed in the event of a default by a wholesale supplier of power for Type I SOS load, which procedures will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such default.

III. Type II Non-Residential Standard Offer Service

37. Distribution customers eligible for Type II Non-Residential Standard Offer Service ("Type II SOS") consist of all non-residential customers not eligible for Type I SOS whose PJM capacity peak load contribution is less than 600 kW, excluding existing Utility special generation contract customers.
38. If all customers in a particular rate schedule are eligible for this service, the rate schedule will state this eligibility. If some but not all customers taking service under a given distribution rate schedule will be eligible for this service ("mixed service eligibility rate schedule"), the relevant eligibility criteria will be stated in the rate schedule.

- a) For customers within a mixed service eligibility rate schedule, the customer's capacity peak load contribution (PLC), as that term or its successor is defined by PJM, will be the basis of qualification of Type II SOS. For AP customers, the qualifying load shall be equal to the customer's forecasted period peak load (FPPL) as that term or its successor is defined by the PJM West Reliability Assurance Agreement (RAA).
- b) Customers in mixed service eligibility rate schedules will be categorized as soon as practicable after the Utilities have established customers' PLCs. Such categorization will apply only to the upcoming service year for Type II SOS.
- c) Bid packages for mixed eligibility rate schedules shall reflect appropriately revised load information (including load profiles and other relevant usage characteristics for the two sub-classes within the rate schedule.)
- d) The categorization of the customer shall not change within an SOS service year.
- e) New customers without summer load history will be categorized by the Utility consistent with existing protocols for the development of the PJM capacity peak load contribution or the PJM West FPPL, or its successor for new customers.
- f) The foregoing eligibility criteria also will be applied to differentiate between Delmarva's SGS-S Type I customers and SGS-S Type II customers.

39. The Utilities agree to provide Type II SOS within their respective Maryland franchise territories for the following periods (collectively the "Type II Service Periods"):
- a) AP will provide Type II SOS from January 1, 2005, to December 31, 2006.
 - b) BGE will provide Type II SOS from July 1, 2004, to May 31, 2006.
 - c) Delmarva will provide Type II SOS from the end of the bridge period in 2004 that was set in Case No. 8936, to May 31, 2006.
 - d) Pepco will provide Type II SOS from July 1, 2004, to May 31, 2006.
40. Rules, terms and conditions in this Settlement for this service will remain the same for the entirety of the Type II Service Periods.
41. Following the first year of its Type II Service Period, each Utility will report to the Commission on its wholesale electric supply procurement process and results, SOS retail prices produced, and enrollment activity for this service (including the number of customers, megawatt peak load, kilowatt hour energy, and switching to and from the service) for the prior year. Copies of this report will be served on all the Parties. This requirement is not intended to replace or restrict other reporting requirements that the Commission has or may impose upon utilities or electric suppliers.
42. The Commission will docket a proceeding for a major policy review of Type II SOS during the second year of each Utility's Type II Service Period when procurement and price results for the second year are known and there is some second-year enrollment experience.

- a) The Commission Staff will initiate the policy review and will provide relevant information, analysis, conclusions and recommendations.
 - b) The findings in a final Commission order resulting from each Utility's policy review will apply only to the provision of SOS in that Utility's service territory following the Type II Service Periods. All issues associated with the provision of SOS after Type II Service Periods are open to review and change.
 - c) Results of the policy review may differ for each Utility's Maryland franchise territory.
43. All customers eligible for Type II SOS are subject to the general terms and conditions of the Utilities' tariffs and the Commission's regulations, as they may change from time to time subject to Commission approval.
44. Electric supply for Type II SOS Service will be obtained by each Utility pursuant to a competitive wholesale procurement process. The Model Bid Plan for Type II SOS will be developed in Phase II of this proceeding. There is a presumption that the wholesale bidding process developed in Phase II of this proceeding will use RFPs to solicit supply offers. The Model Bid Plan that results from Phase II will be submitted to the Commission for approval. Proposed regulations will be submitted to the Commission for approval after Phase II.
45. The Model Bid Plan to be developed in Phase II will include, but not be limited to, the following features:
- a) Each Utility will solicit offers for Full-Requirements Service (as described in Paragraph 7(a)) for 1-year terms.

- b) Each Utility will solicit seasonally-differentiated and, if applicable, time-of-use differentiated prices.
- c) Supply contracts with each Utility shall not extend beyond that Utility's Type II Service Period, unless as a result of the major policy review the Commission provides for further Utility-procured SOS beyond the Type II Service Period.
- d) The total load may be divided into load blocks to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total SOS load and each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.
- e) The first SOS year will end May 31 of the first year in each Utility's Type II Service Period, and the second year will begin June 1 of the same calendar year, in order to reset SOS periods to conform to the PJM planning period. Notwithstanding any other provision of this Settlement, this reset provision may be revisited if PJM changes its planning periods.
- f) The Model Bid Plan will take into account the bidder's price, the bidder's credit worthiness and financial capability, the bidder's experience, supply diversity, and any other similar factors.
- g) The Model Bid Plan will also describe procedures that will be used to resolicit, rebid or otherwise secure electric supply in the event that conforming bids to provide electricity supply do not fill all requested load blocks. These

procedures will only apply to the unfilled blocks. These procedures also will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such failure to secure bids.

46. Each Utility will submit its specific Utility Bid Plan to the Commission for review of compliance with the Commission-approved Model Bid Plan for Type II SOS. Copies of the Utility Bid Plan will be served on the Parties.
47. Each Utility will submit the final bid results, bid award(s) and proposed contracts(s) to the Commission for its review and determination of compliance with the Utility Bid Plan. The Parties will consider in Phase II whether the submission would also be provided to the Parties with appropriate confidentiality protection. The contract(s) will be deemed to be in compliance with the Utility Bid Plan and approved by the Commission unless the Commission orders otherwise within 2 business days following the submission. The Parties will determine in Phase II the period of time between the Commission's review and when details of the awarded bid(s) become public.
48. Winning bidders will receive the actual prices in their offers for each year of the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of their supply contracts.
49. The retail prices to Type II SOS customers for each Utility will consist of the sum of the following components:

- a) The seasonally-differentiated and, if applicable, time-of-use differentiated load weighted average of all awarded electric supply prices for each service in each year;
 - b) Retail charges designed to recover, on an aggregate basis, FERC-approved transmission charges and any other PJM charges, and costs incurred by the Utility directly related to the Utility's Type II SOS load obligation;
 - c) An Administrative Charge; and
 - d) Applicable taxes.
50. The Administrative Charge will be a 6.0 mill (0.6 cents) per kWh charge, fixed for each Utility's Type II SOS Service Period. The Administrative Charge applies exclusively to kWh of SOS load, and shall not be applicable to kWh load served by competitive retail suppliers.
- a) 2.0 mills (0.2 cents) per kWh of the Administrative Charge will be paid to the Utilities as return, for retention by their shareholders. This return component shall remain fixed for the entirety of each Utility's Type II Service Period. The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.
 - b) The remaining 4.0 mills (0.4 cents) per kWh of the Administrative Charge will be collected by the Utilities and allocated in the following order:

- (1) The revenue from the 4.0 mills (0.4 cents) per kWh will first be reduced to reflect the Utilities' actual incremental costs of providing Type II SOS as defined in this Settlement for each year of program operation.
 - (A) Prior to the first year and second year of program operation, the Utilities shall file with the Commission, and provide Parties, annual estimates of actual incremental costs for the upcoming year on a total cost and mills per kWh basis, with all supporting documentation. The Staff shall audit (except for the first year) and verify these estimates and report the results to the Parties.
 - (B) Following each year of program operation, each Utility shall file with the Commission, and provide the Parties, a report detailing the actual incremental costs of providing Type II SOS as defined in this Settlement for the previous year, with all supporting documentation. The Staff shall audit and verify these actual incremental costs and report the results to the Parties.
 - (C) In Phase II the Parties will consider whether to implement more frequent true-ups.
 - (D) The actual incremental costs for the first Type II SOS year shall be used to true up the estimated incremental costs for that same year, and any over- or under-collection of costs shall be applied to the estimated incremental costs for the second Type II SOS program year.

- (E) For purposes of this Settlement, “actual incremental costs” are defined as additional reasonable costs prudently incurred by a Utility only as a direct result of providing Type II SOS that are not included in distribution service rates. For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a Utility’s distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education; transactions costs; and cash working capital revenue requirement, subject to the limitations in subsection (2) below. Such incremental costs shall not include any compensation for the risk of providing Type II SOS.
- (2) The Utility shall calculate the cash working capital revenue requirement associated with Type II SOS. One half of that revenue requirement is recovered as part of the return component of the Administrative Charge. The remaining half is recovered as part of the incremental cost component of the Administrative Charge, subject to a ceiling amount of 0.15 mills per kWh. Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II. The calculation of cash working capital revenue requirement shall use the Utility’s total weighted cost of capital grossed up for income taxes.
- (3) The revenue resulting from the portion of the 4.0 mills (0.4 cents) per kWh remaining following the deduction for Type II SOS incremental

costs shall be credited, dollar for dollar, to all distribution customers eligible for Type II SOS. For both years of program operation, the residual balance shall be determined by deducting the estimated incremental costs as determined under this Settlement from the revenue estimate determined by multiplying the 4.0 mills (0.4 cents) per kWh by the estimated kWh of Type II SOS for that year. This residual balance will be shared among all non-residential distribution customers eligible for Type II SOS on a per kWh distribution sales service basis, beginning on the first day of the first year of the Type II Service Period.

- (4) In the event that Type II actual incremental costs for a given year are greater than the revenue derived from the 4.0 mills (0.4 cents) per kWh, the per-kWh credit shall be zero and the Settling Parties agree to immediately enter good faith negotiations to resolve issues pertaining to the recovery of such amounts. If the Settling Parties are unable to agree following such negotiations, the matter shall be submitted to the Commission for prompt determination. Parties are free to take any position concerning such costs, including, but not limited to, whether such costs are correct and the manner of recovery, but are not permitted to argue that actual incremental costs as defined in this Settlement are not recoverable.
- (5) At the conclusion of the entirety of each Utility's Type II Service Period, and after actual incremental costs incurred by the Utilities have been

determined, the Parties will agree upon a mechanism with respect to actual incremental costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for Type II SOS at the conclusion of each Utility's Type II Service Period. If the Parties fail to agree within a reasonable period, the matter will be submitted to the Commission for decision. The Settling Parties retain all rights to take any position concerning these issues, except that no party may argue that actual incremental costs are not recoverable.

51. All customers eligible for Type II SOS will be informed of the prices for the service at least two (2) months prior to the beginning of each service year. If it is not practicable to provide such notice, each Utility shall file with the Commission and serve upon the Parties notice of that fact, the reasons for the delay, and the expected date for the provision of such information.
52. The Settling Parties agree that all solicitations for the wholesale supply of Type II SOS will be required to include provisions to mitigate wholesale suppliers' exposure to the volumetric risk associated with customer migration. In Phase II, the Settling Parties agree to develop a procurement structure to adequately address the customer migration risk to the wholesale suppliers. This structure will be designed to ensure reliable supply and to ensure that the Utilities do not bear the risk of this contract and supply structure. A mechanism will be developed in Phase II that will address the levels of volumetric and pricing risks to which the wholesale suppliers will be

exposed, and how such risks will be addressed. The Parties will consider specific methods for risk containment, including but not limited to:

- a) Percentage load variations (bandwidths) for both increases and decreases (currently discussed as 5%);
- b) The release of the wholesale suppliers' obligation to supply load, at the original contract fixed price, that has been lost due to customers migrating to the retail supply market (based on decreases in actual megawatt load being served);
- c) The pricing structure for load migrating to SOS (that will result in a weighted average, single-rate-class pricing structure); and
- d) Other components that will balance the needs of suppliers and the value to customers.

The mechanism adopted in Phase II will require the SOS wholesale suppliers to fully meet the Utilities' SOS load at all times; however, the SOS wholesale suppliers will not be required to take incremental load obligations that are not specifically identified and priced as incremental load.

53. In the event that a Phase II settlement is not achieved that will implement Paragraph 52, and there is litigation regarding such appropriate customer migration risk mitigation measures, and the Commission determines not to implement a customer migration risk mitigation provision that is reasonably consistent with the provisions of Paragraph 52, then the requirements of Paragraph 54 shall be voided. The Parties may thereafter propose alternative customer migration risk mitigation measures. In

such circumstance, all Parties reserve the right to take any position with respect to any proposed alternative customer migration risk mitigation measure, including the position that no such measures are appropriate.

54. Except as provided in this Settlement and the Utilities' customer enrollment rules and tariffs, and effective during the service periods specified herein, there shall be no minimum stay, exit fees or penalties, or similar provisions or restrictions that may inhibit any Type II SOS customer's ability to switch to or from any electricity supplier or service.
55. Phase II of this proceeding will, among other things, develop procedures to be followed in the event of a default by a wholesale supplier of power for Type II SOS load, which procedures will be designed to ensure reliable supply to customers, and to ensure that the Utilities do not bear the risk of such default.

IV. Type III Large-Customer Service

56. Distribution customers eligible for Type III Large-Customer Service ("Type III Customers") consist of all non-residential customers not eligible for Type I or Type II SOS, excluding existing special generation contract customers and excluding Bethlehem Steel, National Railroad Passenger Corporation, Eastalco Aluminum Company, and Westvaco Corporation.
57. The Utilities agree to provide Type III Large-Customer Service within their respective Maryland franchise territories for the following periods (collectively the "Type III Service Periods"):

- a) AP will provide Type III Large-Customer Service from January 1, 2005, to December 31, 2005.
 - b) BGE will provide Type III Large-Customer Service from July 1, 2004, to May 31, 2005.
 - c) Delmarva will provide Type III Large-Customer Service from the end of the bridge period in 2004 that was set in Case No. 8936, to May 31, 2005.
 - d) Pepco will provide Type III Large-Customer Service from July 1, 2004, to May 31, 2005.
58. Rules, terms and conditions in this Settlement for this service will remain the same for the entirety of the Type III Service Periods.
59. Following its Type III Service Period, each Utility will report to the Commission on its wholesale electric supply procurement process and results, retail prices produced, and enrollment activity for this service (including the number of customers, megawatt peak load, kilowatt hour energy, and switching to and from the service) for the prior year. Copies of this report will be served on all Parties. This requirement is not intended to replace or restrict other reporting requirements that the Commission has or may impose upon utilities or electric suppliers.
60. Type III Customers are eligible for Type III Large-Customer Service, subject to the terms and conditions of the Utilities' tariffs, the Commission's regulations, and the following conditions:
- a) If a Type III Customer is taking fixed price service from a Utility at the start of that Utility's Type III Service Period, the customer shall receive Type III

Large-Customer Service unless the customer informs the Utility, in writing or electronically, of its election to take Hourly-Priced Non-Residential Service at least 30 days prior to the start of the Type III Service Period.

- b) If a Type III Customer is taking variable price service from a Utility at the start of that Utility's Type III Service Period, the customer shall receive Hourly-Priced Non-Residential Service unless the customer informs the Utility, in writing or electronically, of its election to take Type III Large-Customer Service at least 30 days prior to the start of the Type III Service Period.
- c) If a Type III Customer is being served by a retail competitive supplier at the start of or during its Utility's Type III Service Period, and then returns to taking electricity supply from the Utility, the Type III Customer may take Type III Large-Customer Service or Hourly-Priced Non-Residential Service, so long as the customer informs the Utility of its election, in writing or electronically, consistent with the Utility's Supplier Coordination Tariff switching rules. If the customer who switched to Utility service fails to make an election, the customer will be assigned to the Hourly-Priced Non-Residential Service.
- d) If a Type III Customer is placed on Hourly-Priced Service as a result of supplier non-delivery, the customer may elect at any time to switch to Type III Large-Customer Service or to a competitive retail supplier. The term "supplier non-delivery" is defined as having occurred as a result of the following circumstances: PJM supplier default, supplier bankruptcy or Commission action ending retail supplier authorization.

- e) No customer may go directly from Type III Large-Customer Service to Hourly-Priced Non-Residential Service, or vice versa, during its Utility's Type III Service Period. At the end of the Utility's Type III Service Period, all customers still on Type III Large-Customer Services will automatically be switched to Hourly-Priced Non-Residential Service.
 - f) Except as provided in Paragraphs 60 and 71, customers may leave or return to Type III Large-Customer Service at any time without switching restrictions.
61. By July 1, 2004, BGE will install interval meters for all customers eligible for Type III Large-Customer Service. BGE will install this metering and will recover the costs under the terms of Rider 23 – Advanced Metering Services.
62. Electric supply for Type III Large-Customer Service will be obtained by the Utilities pursuant to a competitive wholesale procurement process. The Model Bid Plan for Type III Large-Customer Service will be developed in Phase II of this proceeding. There is a presumption that the wholesale bidding process developed in Phase II of this proceeding will use RFPs to solicit supply offers. The Model Bid Plan that results from Phase II will be submitted to the Commission for approval. Proposed regulations will be submitted to the Commission for approval after Phase II.
63. The Model Bid Plan to be developed in Phase II will include, but not be limited to, the following features:
- a) Each Utility will solicit offers for Full-Requirements Service (as described in Paragraph 7(a)).

- b) Each Utility will solicit seasonally-differentiated and, if applicable, time-of-use differentiated prices.
 - c) Supply contracts with each Utility shall not extend beyond that Utility's Type III Service Period.
 - d) The total load may be divided into load blocks to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total Type III Large-Customer Service load and each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.
 - e) The Model Bid Plan will take into account the bidder's price, the bidder's credit worthiness and financial capability, the bidder's experience, supply diversity, and any other similar factors.
 - f) The Model Bid Plan will also describe procedures that will be used to resolicit, rebid or otherwise secure electric supply in the event that conforming bids to provide electricity supply do not fill all requested load blocks. These procedures will only apply to the unfilled blocks. These procedures also will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such failure to secure bids.
64. Each Utility will submit its specific Utility Bid Plan to the Commission for review of compliance with the Commission-approved Model Bid Plan for Type III Large-Customer Service. Copies of the Utility Bid Plan will be served on the Parties.

65. Each Utility will submit the final bid results, bid award(s) and proposed contract(s) to the Commission for its review and determination of compliance with the Utility Bid Plan. The Parties will consider in Phase II whether the submission would also be provided to the Parties with appropriate confidentiality protection. The contract(s) will be deemed to be in compliance with the Utility Bid Plan and approved by the Commission unless the Commission orders otherwise within 2 business days following the submission. The Parties will determine in Phase II the period of time between the Commission's review and when details of the awarded bid(s) become public.
66. Winning bidders will receive the actual prices in their offers for the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of their supply contracts.
67. The retail prices for Type III Large-Customer Service for each Utility will consist of the sum of the following components:
- a) The seasonally-differentiated and, if applicable, time-of-use differentiated, load weighted average of all awarded bid prices for Type III Large-Customer Service;
 - b) Retail charges designed to recover, on an aggregate basis, FERC-approved transmission charges and any other PJM charges and costs incurred by the Utility directly related to the Utility's Type III Large-Customer Service load obligation;
 - c) An Administrative Charge; and

d) Applicable taxes.

68. The Administrative Charge will be a 6.5 mill (0.65 cents) per kWh charge, fixed for each Utility's Type III Service Period. The Administrative Charge applies exclusively to kWh of Type III Large-Customer Service load, and shall not be applicable to kWh load served by competitive retail suppliers.

a) 3.0 mills (0.3 cents) per kWh of the Administrative Charge will be paid to the Utilities as return, for retention by their shareholders. This return component shall remain fixed for the entirety of each Utility's Type III Service Period.

The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.

b) The remaining 3.5 mills (0.35 cents) per kWh of the Administrative Charge will be collected by the Utilities and allocated in the following order:

(1) The revenues from the 3.5 mills (0.35 cents) per kWh will first be reduced to reflect the Utilities' actual incremental costs of providing Type III Large-Customer Service as defined in this Settlement for the year of program operation.

(A) Prior to program operation, each Utility shall file with the Commission, and provide to Parties, an estimate of actual incremental costs for the program period on a total cost and mills per

kWh basis, with all supporting documentation. The Staff shall verify these estimates and report the results to Parties.

- (B) Following each Utility's Type III Service Period, each Utility shall file with the Commission, and provide the Parties, a report detailing the actual incremental costs of providing Type III Large-Customer Service as defined in this Settlement for the program period, with all supporting documentation. The Staff shall audit and verify these actual incremental costs and report the results to the Parties.
- (C) In Phase II the Parties will consider whether to implement more frequent true-ups.
- (D) At the conclusion of each Utility's Type III Service Period, and after actual incremental costs incurred by the Utilities have been determined, the Parties will agree upon a mechanism with respect to actual incremental costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for Type III Large-Customer Service at the conclusion of each Utility's Type III Service Period. If the Parties fail to agree within a reasonable period, the matter will be submitted to the Commission for decision. The Settling Parties retain all rights to take any position concerning these issues, except that no party may argue that actual incremental costs are not recoverable.
- (E) For purposes of this Settlement, "actual incremental costs" are

defined as additional reasonable costs prudently incurred by a Utility only as a direct result of providing Type III Large-Customer Service that are not included in distribution service rates. For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a Utility's distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education; transactions costs; and cash working capital revenue requirement, subject to the limitations in subsection (2) below. Such incremental costs shall not include any compensation for the risk of providing Type III Large-Customer Service.

- (2) The Utility shall calculate the cash working capital revenue requirement associated with Type III Large-Customer Service. One half of that revenue requirement is recovered as part of the return component of the Administrative Charge. The remaining half is recovered as part of the incremental cost component of the Administrative Charge, subject to a ceiling amount of 0.15 mills per kWh. Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II. The calculation of cash working capital revenue requirement shall use the Utility's total weighted cost of capital grossed up for income taxes.
- (3) The revenue resulting from the portion of the 3.5 mills (0.35 cents) per kWh remaining following the deduction for Type III Large-Customer

Service actual incremental costs shall be credited, dollar for dollar, to all distribution customers eligible for Type III Large-Customer Service. The residual balance shall be determined by deducting the estimated incremental costs as determined under this Settlement from the revenue estimate determined by multiplying 3.5 mills (0.35 cents) per kWh by the estimated kWh of Type III Large-Customer Service. This residual balance will be shared among all non-residential distribution customers eligible for Type III Large-Customer Service on a per kWh distribution sales service basis, beginning on the first day of the Type III Service Period.

- (4) In the event that Type III Large-Customer Service actual incremental costs are greater than the revenue derived from the 3.5 mills (0.35 cents) per kWh, the per-kWh credit shall be zero and the Settling Parties agree to immediately enter good faith negotiations to resolve issues pertaining to the recovery of such amounts. If the Settling Parties are unable to agree following such negotiations, the matter shall be submitted to the Commission for prompt determination. Parties are free to take any position concerning such costs, including, but not limited to, whether such costs are correct and the manner of recovery, but are not permitted to argue that actual incremental costs as defined in this Settlement are not recoverable.

69. All customers eligible for Type III Large-Customer Service will be informed of the prices for the service at least two (2) months prior to the beginning of the Type III Service Period. If it is not practicable to provide such notice, each Utility shall serve upon the Parties notice of that fact, the reason for the delay, and the expected date for the provision of such information.
70. The Settling Parties agree that all solicitations for the wholesale supply of Type III Large-Customer Service will be required to include provisions to mitigate wholesale suppliers' exposure to the volumetric risk associated with customer migration. In Phase II, the Settling Parties agree to develop a procurement structure to adequately address the customer migration risk to the wholesale suppliers. This structure will be designed to ensure reliable supply and to ensure that the Utilities do not bear the risk of this contract and supply structure. A mechanism will be developed in Phase II that will address the levels of volumetric and pricing risks to which the wholesale suppliers will be exposed, and how such risks will be addressed. The Parties will consider specific methods for risk containment, including but not limited to:
- a) Percentage load variations (bandwidths) for both increases and decreases (currently discussed as 5%);
 - b) The release of the wholesale suppliers' obligation to supply load, at the original contract fixed price, that has been lost due to customers migrating to the retail supply market (based on decreases in actual megawatt load being served);

- c) The pricing structure for load migrating to Type III Large-Customer Service (that will result in a weighted average, single-rate-class pricing structure); and
- d) Other components that will balance the needs of suppliers and the value to customers.

The mechanism adopted in Phase II will require the wholesale suppliers to fully meet the Utilities' Type III Large-Customer Service load at all times; however, the wholesale suppliers will not be required to take incremental load obligations that are not specifically identified and priced as incremental load.

- 71. In the event that a Phase II Settlement is not achieved that will implement Paragraph 70, and there is litigation regarding such appropriate customer migration risk mitigation measures, and the Commission determines not to implement a customer migration risk mitigation provision that is reasonably consistent with the provisions of Paragraph 70, then the requirements of Paragraphs 60(f) and 72 shall be voided. The Parties may thereafter propose alternative customer migration risk mitigation measures. In such circumstance, all Settling Parties reserve the right to take any position with respect to any proposed alternative customer migration risk mitigation measure, including the position that no such measures are appropriate.
- 72. Except as provided in this Settlement and the Utilities' customer enrollment rules and tariffs, and effective during the service periods specified herein, there shall be no minimum stay, exit fees or penalties, or similar provisions or restrictions that may inhibit any Type III Customer's ability to switch to or from any electricity supplier or service.

73. Phase II of this proceeding will develop procedures to be followed in the event of a default by a wholesale supplier of power for Type III Large-Customer Service load, which procedures will be designed to ensure reliable service to customers and to ensure that the Utilities do not bear the risk of such default.

V. Hourly-Priced Non-Residential Service

74. Distribution customers eligible for Hourly-Priced Non-Residential Service consist of all non-residential customers, excluding existing special generation contract customers, not eligible for Type I or Type II SOS ("Hourly-Priced Customers").
75. The Utilities agree to provide Hourly-Priced Non-Residential Service starting at the beginning of each Utility's Type III Service Period.
76. Rules, terms and conditions in this Settlement for this service will remain the same for at least two years, and thereafter may be changed, prospectively only, by the Commission following a major policy review in which all interested parties may participate. Any party may request such a review, or the Commission may commence it on its own motion, at any time after the first year of service.
77. All Hourly-Priced Customers are eligible for Hourly-Priced Non-Residential Service, subject to the general terms and conditions of the Utilities' tariffs and the Commission's regulations, as they may change from time to time subject to Commission approval, and the other provisions of this Settlement.
78. The manner in which supply for Hourly-Priced Non-Residential Service is obtained will be at the Utilities' discretion. To the extent that a Utility chooses to procure the

power in a manner that places price or volume risks on the Utility, and incurs extraordinary incremental costs, the Utility will bear such risks and such extraordinary incremental costs, and will file a compliance plan with the Commission to demonstrate how such risks will be managed.

79. The retail prices to Hourly-Priced Non-Residential Service customers for each Utility will consist of the sum of the following components:
- a) The appropriate PJM hourly integrated real time locational marginal price for energy;
 - b) Charges associated with the PJM capacity obligation;
 - c) FERC-approved transmission, ancillary services, administrative, energy losses, and any other FERC-approved or PJM charges and costs directly related to the Utilities' Hourly-Priced Non-Residential Service load obligation;
 - d) An Administrative Charge;
 - e) Applicable taxes; and
 - f) Any other price element directly related to the Utilities' Hourly-Priced Non-Residential Service load obligation that may be identified in Phase II and approved by the Commission.
80. The election provisions of Paragraph 60 apply to Hourly-Priced Non-Residential Service.
81. Except as provided in this Settlement and the Utilities' customer enrollment rules and tariffs, and effective during the service periods specified herein, there shall be no minimum stay, exit fees or penalties, or similar provisions or restrictions that

may inhibit any Hourly-Priced Non-Residential customer's ability to switch to or from any electricity supplier or service.

82. The Administrative Charge will be between 2.25 mills (0.225 cents) and 3.0 mills (0.3 cents) per kWh. The Administrative Charge applies exclusively to kWh of Hourly-Priced Non-Residential Service load, and shall not be applicable to kWh load served by competitive retail suppliers.
 - a) 2.25 mills (0.225 cents) per kWh of the Administrative Charge will be paid to the Utilities, for retention by their shareholders. This return component shall remain fixed for the entirety of the period that each Utility offers Hourly-Priced Non-Residential Service pursuant to this Settlement. The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.
 - b) Up to 0.75 mills (0.075 cents) per kWh of the Administrative Charge will be used to reimburse the Utilities for their actual incremental costs of providing Hourly-Priced Non-Residential Service.
 - (1) Prior to the first year and second year of program operation, the Utilities shall file with the Commission, and provide Parties, annual estimates of actual incremental costs for the upcoming year on a total cost and mills per kWh basis, with all supporting documentation. The Staff shall audit

(except for the first year) and verify these estimates and report the results to the Parties.

- (2) Following each year of program operation, each Utility shall file with the Commission, and provide the Parties, a report detailing the actual incremental costs of providing Hourly-Priced Non-Residential Service as defined in this Settlement for the previous year, with all supporting documentation. The Staff shall audit and verify these actual incremental costs and report the results to the Parties.
- (3) In Phase II the Parties will consider whether to implement more frequent true-ups.
- (4) The actual incremental costs for the first Hourly-Priced Non-Residential Service year shall be used to true up the estimated incremental costs for that same year, and any over- or under-collection of costs shall be applied to the estimated incremental costs for the second Hourly-Priced Non-Residential Service program year.
- (5) For purposes of this Settlement, "actual incremental costs" are defined as additional reasonable costs prudently incurred by a Utility only as a direct result of providing Hourly-Priced Non-Residential Service that are not included in distribution service rates. For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a Utility's distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education;

transactions costs; and cash working capital revenue requirement, subject to the limitations in subsection (6) below. Such incremental costs shall not include any compensation for the risk of providing Hourly-Priced Non-Residential Service.

- (6) The Utility shall calculate the cash working capital revenue requirement associated with Hourly-Priced Non-Residential Service. One half of that revenue requirement is recovered as part of the return component of the Administrative Charge. The remaining half is recovered as part of the incremental cost component of the Administrative Charge, subject to a ceiling amount of 0.15 mills per kWh. Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II. The calculation of cash working capital revenue requirement shall use the Utility's total weighted cost of capital grossed up for income taxes.
- (7) If a Utility's actual incremental costs exceed the revenue derived from the 0.75 mills per kWh for this service, the Utility shall, upon approval of the costs by the Commission, recover the amount of the excess actual incremental costs through a surcharge to distribution service rates of all active customers eligible for Hourly-Priced Non-Residential Service.
- (8) At the conclusion of the entirety of each Utility's Hourly-Priced Non-Residential Service, and after actual incremental costs incurred by the Utilities have been determined, the Parties will agree upon a mechanism

with respect to actual incremental costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for Hourly-Priced Non-Residential Service at the conclusion of each Utility's Hourly-Priced Non-Residential Service. If the Parties fail to agree within a reasonable period, the matter will be submitted to the Commission for decision. The Settling Parties retain all rights to take any position concerning these issues, except that no party may argue that actual incremental costs are not recoverable.

VI. Miscellaneous

83. Except as set forth in this Paragraph 83, the provisions of this Settlement are not intended to apply to Maryland's electric cooperatives.
- a) In accordance with Section 7-510(c)(3)(i) of the PUC Article, each electric cooperative may continue to provide standard offer service to its customers, unless and until the cooperative elects to cease providing such service after providing the Commission with at least 12 month's notice of such election.
 - b) This Settlement does not change the terms of Southern Maryland Electric Cooperative's settlement in Case No. 8817, or of Choptank Electric Cooperative's settlement in Case No. 8823. Nor does this Settlement constitute any precedent for what will transpire after the expiration of those cooperatives' settlements.

- c) Maryland electric cooperatives may continue to procure power supply for standard offer service in any manner they choose, including, but not limited to, by purchasing wholesale power from third-party suppliers through a competitive process, subject to the Commission's authority to determine the reasonableness of the procurement methods used and the rates that result.
 - d) In the event that an electric cooperative elects to cease providing standard offer service to any of its customers, the Commission may institute a separate proceeding to determine the rules pursuant to which standard offer service or default service could then be made available in that cooperative's service territory.
84. The Utilities will procure and pay for independent consultants who will be responsible for monitoring all aspects of the procurement of the Utility SOS services and the Type III Large-Customer Service described in this Settlement.
- a) These consultants will be selected by, will take their direction from, and will provide their consultation and work products to, the Commission or its Staff.
 - b) These consultant costs will be included in the incremental costs that the Utilities will recover through the Administrative Charges described in the Settlement.
 - c) The consultants will provide the Commission with a final report as to each supply procurement and award. Copies of each report with appropriate redactions (as determined in Phase II) will be forwarded to each Party who executes a confidentiality agreement approved by the Commission.

85. Other than such customer information and notification requirements as are ordered by the Commission with respect to the services set forth in this Settlement, the Utilities will in no way promote any of those services or describe any of them as being superior or preferable to services supplied by competitive retail suppliers. Prior to implementation of any of the services described in this Settlement, the Parties will discuss mechanisms for providing customer information and notification.
86. The Settling Parties agree to consider, in Phase II of this proceeding, the development, consistent with the terms set forth in this Settlement, of an Experimental Demand Response Service to be offered, as an optional service, to residential and eligible non-residential customers.
87. The Settling Parties agree to consider, in Phase II of this proceeding, the development of retail product offerings that would include renewable or "green" energy resources. Examples for consideration may include a retail "green" SOS program, or mechanisms to stimulate customer participation in renewable energy-based products.
88. Several issues referred to in this Settlement have been deferred to Phase II for resolution. A list of the issues the Settling Parties have agreed to consider in Phase II is included as Appendix I to this Settlement. The Settling Parties agree to negotiate in good faith to resolve those specific issues, and to submit a Phase II settlement to the Commission for review and approval. Should the Parties be unable to resolve a Phase II issue, that issue shall be litigated before the Commission,

without changing any aspect of the terms agreed to in the Phase I Settlement. The Settling Parties agree to support or not oppose the procedural structure as proposed in Staff's October 31, 2002, letter in this proceeding to the Commission.

89. Any and all tariff revisions proposed by the Utilities that implement this Settlement shall be filed with the Commission and served upon the Settling Parties contemporaneously.

VII. Reservations

90. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any future case. No Settling Party necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this Settlement other than as specified herein, except that the Settling Parties agree that the resolution of the issues herein, taken as a whole, is in the public interest.
91. No Settling Party shall be deemed to have approved, accepted, agreed, or consented to any principle underlying or supposed to underlie any of the matters provided for in this Settlement, nor shall approval of this Settlement constitute in any respect a determination by the Commission as to the merits of any of the contentions or allegations which might be made by any of the Parties in the absence of settlement.
92. Except as otherwise provided in this Settlement, all Settling Parties reserve all rights to take any position concerning any issue addressed in this Settlement in any future proceedings. The Settling Parties and their members (if any) stipulate not to seek

judicial review of a Commission order approving the Settlement as filed without modification, and stipulate not to take any action before the Commission or a Court in derogation of the Settlement.

93. The various provisions of this Settlement are not severable. None of the provisions shall become operative unless and until the Commission issues an order approving the Settlement without modification or condition. If any portion of this Settlement is modified, conditioned, or rejected by the Commission, or on appeal from approval by the Commission, the Settlement shall be considered null and void, and each Settling Party individually reserves the right to proceed with the filing of testimony, briefs and evidentiary hearings as contemplated by the Commission's orders in Case No. 8908. If the Settlement is rendered null and void by operation of this Paragraph, the Settling Parties agree to immediately enter into good faith negotiations to reach a new settlement. If any future law or regulation is enacted that any Settling Party believes, in good faith, has a material impact on the rights and obligations arising under this Settlement, the Settling Parties shall meet to discuss what action, if any, should be taken.
94. The discussions that produced this Settlement have been conducted on the understanding that all offers of settlement and discussions relating thereto are and shall be privileged and confidential, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise. If the Commission does not approve this Settlement without

modification or condition, the Settlement shall be deemed withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.

95. Nothing in the Settlement shall be used to abrogate any existing or future contract for competitive retail electricity supply.
96. The headings, titles and captions of the Settlement and its various sections shall have no legal import or precedential value.
97. This Settlement may be executed in any number of identical counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute but one and the same instrument. Delivery by any party or its respective representatives of telecopied (counterpart) signature pages shall be as binding an execution and delivery of this Settlement by such party as if the other parties had received the actual physical copy of the entire Settlement with an ink signature from such party.

IN WITNESS WHEREOF, the Settling Parties respectfully request that the Commission approve this Settlement without modification or condition, and set forth their respective signatures as of the ____ day of November, 2002.